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IN THE

Supreme Court of the United States

October Term, 1960

COMMONWEALTH OIL REFINING COMPANY, INC.,

Petitioner,

—against—

THE LUMMUS COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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September 29, 1960

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—against—

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the First Circuit (Woodbury, Chief Judge, and Hartigan and Aldrich, Circuit Judges) entered June 16, 1960, vacating three orders of the United States District Court for the District of Puerto Rico which (a) temporarily enjoined respondent from prosecuting in the United States District Court for the Southern District of New York its petition to compel arbitration under two contracts between the parties

(R. 304-313*); (b) denied a motion of respondent to modify the said preliminary injunction (R. 327-336); and (c) stayed—until the District Court for the District of Puerto Rico determined whether valid and existing arbitration agreements existed and whether arbitration should be permanently stayed—the arbitration sought to be initiated in New York by respondent, and enjoined respondent both from prosecuting its petition in the United States District Court for the Southern District of New York to compel arbitration and from taking any steps in pursuance or furtherance of the arbitration for a like period (R. 331-346).

Citations to Opinions Below

The opinion of the district court (Magruder, C.J.) on the motion granting the first preliminary injunction is reported at 174 F. Supp. 485, and is printed in the certified transcript (R. 314-319). The opinion-order (Ruiz Nazario, D.J.) denying the motion to modify the injunction is reported at 175 F. Supp. 873, and is printed in the certified transcript (R. 327-330). No opinion was written in the District Court on the granting of the order for stay of arbitration and injunction of further proceedings in the New York court and

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* References are to pages of the certified transcript of the Record (Rule 21, sd. 3).

The pages of the first volume of the certified transcript, the appendix in the court below to the brief of the defendant-appellant, here the respondent, are numbered regularly; the pages of the second volume of the certified transcript, the appendix in the court below to the brief of plaintiff-respondent, here the petitioner, are identified by the suffix letter "a"; and the pages of the third volume, the proceedings in the Court of Appeals, are identified by the suffix letter "b".

References herein to the opinions of the Court of Appeals are to page numbers of Appendix B, *infra*.

in the arbitration; the order (Ruiz Nazario, D.J.), including findings of fact and conclusions of law, is printed in the certified transcript (R. 331-346).

The opinions of the Court of Appeals of the First Circuit have not yet been reported; they are printed, *infra* pp. 37-69, 70-74, and in the certified transcript (R. 7b, 89b).

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1). The judgments of the Court of Appeals were entered on June 16, 1960 (R. 36b-37b). A petition for rehearing, duly filed by the petitioner on July 11, 1960 (R. 38b-88b), was denied on August 10, 1960 (R. 89b-93b).

Questions Presented

1. Whether in a diversity case a court of appeals has not rendered a decision directly in conflict with *Bernhardt v. Polygraphic Company of America*, 350 U. S. 198 (1956), where (a) a district court has applied the law of the forum as required by the *Bernhardt* case in deciding that there should be a plenary judicial trial whether alleged contracts containing arbitration clauses had been induced by fraud invalidating the arbitration provisions, and (b) the court of appeals reverses and holds that the governing law is that of the *different* place where the contract was made and that under such law petitioner was not entitled to a judicial trial of the fraud question and, while so substantially affecting the enforcement of rights given by the forum, the court of appeals fails to consider the Conflict of Laws rules of the forum respecting the law applicable